



December 14, 2001

Mr. John Steiner  
Division Chief  
City of Austin - Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2001-5849

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156153.

The Water and Wastewater Division of the City of Austin (the "city") received a request for information pertaining to the termination of the Fern Bluff Municipal Utility District's use of city wastewater facilities, specifically information relating to the district, the Lower Colorado River Authority, the builders, or the developers seeking capitol recovery fees. You indicate that except for the information submitted to this office for review, the city has released the responsive information. You assert that the information you have marked in the submitted documents is protected by the attorney-client privilege and thus excepted from disclosure under section 552.107 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and the client's confidences made to the attorney. *See* Open Records Decision No. 574 (1990). Based on your arguments and representations, we find that you have demonstrated the applicability of

---

<sup>1</sup>You also assert section 552.101 of the Government Code in conjunction with the attorney-client privilege. This office has concluded that section 552.101 does not encompass discovery privileges in general. Open Records Decision No. 575 (1990). Thus we address your arguments under section 552.107.

section 552.107(1) to all of the submitted information the city seeks to withhold, except for one communication, which we have marked. Accordingly, with the exception of the communication we have marked for release, the city may withhold under section 552.107(1) the submitted information you have marked as subject to the exception.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely

A handwritten signature in black ink, appearing to read "Michael Garbarino", written over the word "Sincerely".

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/seg

Ref: ID# 156153

Enc. Submitted documents

c: Mr. John C. McLemore  
8400 Cornerwood Drive  
Austin, Texas 78717  
(w/o enclosures)